

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marilyn Y. Armstrong, Marshall R. Mazyck, Lillian Alvarado, Gordon Urquhart, Blake J. Willett, Bryan Henry, Kenneth Davis, Eric Moore, Nzingha M. Kellman, and Michael Benjamin,

Plaintiffs,

-against-

Metropolitan Transportation Authority, Elliot Sander, Executive Director and Chief Executive Officer of the MTA, William Morange Deputy Executive Director/Director of Security of the MTA, Kevin McConville, Chief of the MTA Police Department, and Terrance Culhane, Assistant Deputy Chief of the MTA Police Department,

Defendants.

Civil Action No. 07-3561(DAB) (HBP)

ECF Case

**DECLARATION OF ADAM JUTZE IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT OF CLAIMS OF
KENNETH DAVIS**

ADAM JUTZE declares under penalty of perjury under the laws of the United

States as follows:

1. I am employed as a Detective, Interagency Counterterrorism Task Force ("ICTF"), by the Metropolitan Transportation Authority ("MTA") in its Police Department ("MTA PD"). I make this Declaration in support of Defendants' Motion for Summary Judgment, seeking dismissal of the claims of Plaintiff Kenneth Davis ("Davis").

2. I became a Detective in early March 2004 and within a few weeks, I was assigned to the MTA PD's Interagency Counterterrorism Task Force ("ICTF"), after submitting an application (referred to as an "abstract") and participating in an interview process.

3. When I first joined ICTF in late March 2004, I was a rookie Detective

partnered with Detective Kenneth Davis, who was already a member of ICTF at that time. Davis had considerably more seniority than me. While I was Davis' partner, Davis would ask me to handle certain aspects of the cases he did not care to perform, including the paperwork involved in completing case assignments.

3. It is my understanding that in this lawsuit, Davis is claiming that I received certain cases and assignments in ICTF that he wished to receive. However, the cases I received while I was Davis' partner were those that Davis had declined. Davis was typically offered the assignments I received before I was. Davis often stated that he wanted me to perform these cases so I could gain valuable experience. One type of task Davis typically declined and gave to me was making Court appearances after arrests. This task could involve sitting around in Court all night processing an arrest and was considered "dirty work" that Davis and other senior Detectives in the unit tried to avoid.

4. Another type of assignment that Davis would decline in whole or in part was certain security service details, such as the security detail the week of the United Nations General Assembly. Such security details required a substantial amount of tedious planning work, requiring one Detective to attend all the briefings as a representative of ICTF. Once a Detective began such a security detail, attending such security briefings, the same Detective would have to complete the assignment. Once the actual security detail began, it would often involve a great deal of waiting time. Davis generally declined these assignments, and for those security details in which he did participate, he declined to perform the more tedious planning aspects of such assignments, such as attending security briefings, and to accept only the attendance at the actual event.

5. As a new Detective, I, along with Detective Henry Micyk, was offered and accepted all such cases and tasks which the Detectives in ICTF with more seniority, such as Davis and Joseph Trimarchi, declined. Micyk and I always accepted these assignments, because no one else wanted to do them and because we wanted to earn more overtime pay and to gain valuable experience that the more senior Detectives already had.

6. I also always accepted anticipated overtime offered by the MTA PD's Polling Unit on a seniority basis within the unit, what we refer to as "wheel" overtime, because the Polling Unit makes calls based on a rotating seniority wheel. Such offers of overtime came to Detectives in ICTF after uniformed Police Officers and Detectives in the Detective Division had already been polled. The assignments usually involved uniformed patrol, requiring a Detective to serve in the role of a uniformed Police Officer. Because the Polling Unit would always call the most senior Detectives in ICTF first in the rotation, I would not even be offered such overtime unless Davis and other more senior Detectives had declined it first. Davis told me that he did not accept "wheel" overtime that I accepted, because he did not want to work uniformed patrol.

Executed this 28th day of April 2011
New York, NY

Adam Jutze
ADAM JUTZE

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